

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Judy Lindsay,

Complainant,

vs.

Minnesota DFL State Committee,

Respondent.

NOTICE OF DETERMINATION OF
PRIMA FACIE VIOLATION

AND

NOTICE OF AND ORDER FOR
PROBABLE CAUSE HEARING

TO: Judy Lindsay, [Street Address Redacted], Rosemount, MN 55068; Minnesota DFL State Committee, 255 E. Plato Boulevard, St. Paul, MN 55107.

On October 31, 2008, Judy Lindsay filed a Campaign Complaint with the Office of Administrative Hearings alleging that the Minnesota DFL State Committee violated Minnesota Statutes § 211B.06 by preparing and disseminating false campaign material. After reviewing the Complaint and attached exhibits, the undersigned Administrative Law Judge has determined that the Complaint sets forth a prima facie violation of Minn. Stat. § 211B.06.

THEREFORE, IT IS ORDERED AND NOTICE IS GIVEN that this matter is scheduled for a probable cause hearing to be held by telephone before the undersigned Administrative Law Judge at **1:30 p.m. on Monday, November 10, 2008**. The hearing will be held by call-in telephone conference. You must call: **Nancy Hansen of my office at 651-361-7874 before that time** and she will give you the call in number. When the system asks for your numeric pass code, enter **"20028"** on your phone and you will be connected to the conference. The probable cause hearing will be conducted pursuant to Minnesota Statutes § 211B.34. Information about the probable cause proceedings and copies of state statutes may be found online at www.oah.state.mn.us and www.revisor.leg.state.mn.us.

At the probable cause hearing all parties have the right to be represented by legal counsel, by themselves, or by a person of their choice if that choice is not otherwise prohibited as the unauthorized practice of law. In addition, the parties have the right to submit evidence, affidavits, documentation and argument for consideration by the Administrative Law Judge. Parties should provide to the Administrative Law Judge all evidence bearing on the case, with copies to the opposing party, before the telephone conference takes place. Documents may be emailed to Judge Cervantes at Manuel.Cervantes@state.mn.us or faxed to 651-361-7936.

At the conclusion of the probable cause hearing, the Administrative Law Judge will either: (1) dismiss the complaint based on a determination that the complaint is frivolous, or that there is no probable cause to believe that the violation of law alleged in the complaint has occurred; or (2) determine that there is probable cause to believe that the violation of law alleged in the complaint has occurred and refer the case to the Chief Administrative Law Judge for the scheduling of an evidentiary hearing. Evidentiary hearings are conducted pursuant to Minnesota Statutes § 211B.35. If the

Administrative Law Judge dismisses the complaint, the complainant has the right to seek reconsideration of the decision on the record by the Chief Administrative Law Judge pursuant to Minnesota Statutes § 211B.34, subdivision 3.

Any party who needs an accommodation for a disability in order to participate in this hearing process may request one. Examples of reasonable accommodations include wheelchair accessibility, an interpreter, or Braille or large-print materials. If any party requires an interpreter, the Administrative Law Judge must be promptly notified. To arrange an accommodation, contact the Office of Administrative Hearings at P.O. Box 64620, St. Paul, MN 55164-0620, or call 651-361-7900 (voice) or 651-361-7878 (TDD).

Dated: November 5, 2008

/s/ Manuel J. Cervantes
MANUEL J. CERVANTES
Administrative Law Judge

MEMORANDUM

Judy Lindsay is a candidate for State Representative in House District 37B. She alleges that Respondent disseminated a campaign flyer that contained false campaign material. The flyer, attached to the Complaint, states in part:

Jobs and Health Care Don't Top Judy Lindsay's Narrow Agenda

What's at the top of Judy Lindsay's agenda? Not vanishing jobs...not the cost of health care...and not the education of our children.

What's on the top of her list? Removing sexual orientation from Minnesota's human rights laws.

Judy even stepped down from the school board to devote "more time to a nonprofit group she started" that is dedicated to striking anti-discrimination protections from state laws. (*Star Tribune*, 01/07/2004)

...

Say NO to Judy Lindsay

Complainant alleges that these statements are false for three reasons. First, she asserts that she has campaigned on the economy, jobs, health care and education, and that her website and the *Pioneer Press* voter guide make it clear that these issues are included in her platform. She asserts that it is a "lie" for Respondent to claim these

issues are not part of her agenda and that Respondent is “purposefully trying to mislead the voters.” Secondly, she asserts that she has never talked about or included “removing sexual orientation from the Minnesota human rights law” in her agenda. Lastly, she asserts that Respondent “has purposefully and wrongful[ly] mischaracterized [her] non-profit organization.” She claims that the non-profit group she helped to start was not dedicated to striking anti-discrimination protections from state laws. She claims the group has not been in existence for “three to four years” and that its mission statement was:

In Defense of Innocence, A Legal Defense for Those Speaking Out for Biblical Family Values – In Defense of Innocence is a faith-based, nonprofit organization established to protect children’s innocence from exploitation. In Defense of Innocence will provide education, training, and support based on biblical truths and principles.

Complainant alleges Respondent has violated Minn. Stat. § 211B.06 by publishing these false statements about her.

Minn. Stat. § 211B.06, subd. 1, prohibits intentional participation:

...[i]n the preparation, dissemination, or broadcast of paid political advertising or campaign material with respect to the personal or political character or acts of a candidate, or with respect to the effect of a ballot question, that is designed or tends to elect, injure, promote, or defeat a candidate for nomination or election to a public office or to promote or defeat a ballot question, that is false, and that the person knows is false or communicates to others with reckless disregard of whether it is false.

To be found to have violated this section, a person must intentionally participate in the preparation, dissemination or broadcast of false campaign material that the person knows is false or communicates with reckless disregard of whether it is false.

The term “reckless disregard” was added to the statute in 1998 to expressly incorporate the “actual malice” standard from *New York Times v. Sullivan*.¹ Based on this standard, the Complainant has the burden at the hearing to show by clear and convincing evidence that the Respondents prepared or disseminated the statement knowing that it was false or did so with reckless disregard for its truth or falsity. The test is subjective; the Complainant must come forward with sufficient evidence to prove Respondent “in fact entertained serious doubts” as to the truth of the ad or acted “with a high degree of awareness” of its probable falsity.²

For purposes of a prima facie determination, the Complainant must detail the factual basis to support a claim that the violation of law has occurred.³ “Prima facie” means “[s]ufficient to establish a fact or raise a presumption unless disproved or rebutted.”⁴ “Prima facie evidence” is “[e]vidence that will establish a fact or sustain a

¹ 376 U.S. 254, 279-80 (1964).

² *St. Amant v. Thompson*, 390 U.S. 727, 731 (1968); *Riley v. Jankowski*, 713 N.W.2d 379 (Minn. App.), rev. denied (Minn. 2006).

³ Minn. Stat. § 211B.32, subd. 3.

⁴ *Black’s Law Dictionary* 1228 (8th ed. 2004).

judgment unless contradictory evidence is produced.”⁵ In determining whether a campaign complaint sets forth a prima facie violation of the statute, the Administrative Law Judge is required to credit as true all of the facts that are alleged in the Complaint, provided that those facts are not patently false or inherently incredible.

The Administrative Law Judge finds that the Complainant has alleged a prima facie violation of Minn. Stat. § 211B.06. The statements that Lindsay would “remove sexual orientation from Minnesota’s human rights laws,” and that the nonprofit group she started was “dedicated to striking anti-discrimination protections from state laws,” could be actionable under § 211B.06. Complainant asserts that she has never talked about “removing sexual orientation from the Minnesota human rights law” and that she has never included that issue in her agenda. She asserts that her nonprofit organization was not dedicated to striking anti-discrimination protections from state laws. Complainant has therefore stated a prima violation with respect to these statements and the matter will proceed to a probable cause hearing as scheduled by this Order.

M. J. C.

⁵ *Id.* at 598.